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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

April 22, 1998

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

Re: Personal Communications Industry Association  
Comments on Assessment and Collection of Regulatory Fees for  
Fiscal Year 1998, NPRM MD Docket No. 98-36

Dear Ms. Salas:

Pursuant to Section 1.419(b) of the Commission's Rules, enclosed for filing please find an original and four copies of the Comments of the Personal Communications Industry Association on the captioned Notice of Proposed Rulemaking. Please date stamp the additional copy provided and return to us via our courier.

Sincerely,

Cynthia S. Thomas  
PERSONAL COMMUNICATIONS INDUSTRY  
ASSOCIATION

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Assessment and Collection ) MD Docket No. 98-36  
of Regulatory Fees for )  
Fiscal Year 1998 )

COMMENTS OF THE  
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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April 22, 1998

## TABLE OF CONTENTS

	Page
SUMMARY .....	i
I. THE <i>NPRM</i> FAILS TO JUSTIFY THE FEE INCREASES PROPOSED FOR CMRS MOBILE SERVICES AND CMRS MESSAGING SERVICES .....	2
II. INCREASED REGULATORY FEES INHIBIT MARKET GROWTH AND CREATE BARRIERS TO COMPETITION .....	15
III. CONCLUSION .....	18

## SUMMARY

The Commission has once again proposed significant increases in regulatory fees for both CMRS Mobile Services and CMRS Messaging Services and continues to deny affected parties access to the data upon which it ultimately calculates those fees. This lack of information is particularly a problem where the proposed CMRS Mobile Services fee increase stems solely from subsidies for other fee categories. Likewise, for reasons unexplained, CMRS Messaging Services adjusted regulatory costs increased a phenomenal 579% over Fiscal Year ("FY") 1997.

PCIA initially asks the Commission to clarify how compensation for contract personnel affects the full-time equivalent ("FTE") employee numbers and how FTEs are used under the Commission's cost accounting system. In addition, PCIA challenges the accuracy of time and attendance cost coding on data collected under the Commission's cost accounting system for CMRS Mobile and CMRS Messaging Services, especially with the influx of new personnel, including term employees and contract personnel, who may be new to the telecommunications industry. Moreover, the integrity of data collected in the cost accounting system is called into question because the Wireless Telecommunications Bureau has issued orders and public notices that resolve a significant number of cases that relate to authorizations, which are not feeable activities under Section 9 of the Act. In addition, a 579% increase in regulatory costs in one year is reason alone to question the accuracy of cost accounting data. Finally, office moving expenses that were incurred during FY 1997 should be excluded from Section 9 calculations, or to the extent they are included, should be allocated regardless of the fee categories that incur direct costs at the time of the move.

For these reasons, the Commission must re-examine its regulatory cost calculations for FY 1998. PCIA further urges the Commission to set a cost-increase benchmark at which an

explanation of the increase for any affected category must be included in future regulatory fee rulemakings. In addition, the Commission has no reason not to include “routinely available” actual payment units and the actual amount of fee collected from the prior fiscal year in its attachments to the notice of proposed rulemaking.

Finally, the CMRS Mobile Services and CMRS Messaging Services fees have increased dramatically over the past few years, while inter-exchange carrier and local exchange carrier fees have only risen moderately and, in fact, decreased from FY 1997. The escalating fees in a deregulated industry in contrast to the moderate rise for the heavily regulated wireline industry provides further reason for the Commission to re-examine its cost accounting data from FY 1997. Importantly, rapidly increasing regulatory fees for wireless carriers inhibit wireless market growth and chill competition between wireless and wireline services contrary to the intent of the Telecommunications Act of 1996.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Assessment and Collection	)	MD Docket No. 98-36
of Regulatory Fees for	)	
Fiscal Year 1998	)	

**COMMENTS OF THE  
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA")<sup>1</sup> hereby submits its comments in response to the Notice of Proposed Rulemaking ("*NPRM*") in the captioned docket.<sup>2</sup> The *NPRM* significantly increases regulatory fees for both CMRS Mobile Services and CMRS Messaging Services. PCIA challenges the accuracy of the data collected under the Commission's cost accounting system and asks the Commission to recalculate its adjusted regulatory costs for these categories. Accurate cost accounting data will result in more accurate fee assessments for all categories. In support of its comments, PCIA respectfully shows the following.

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<sup>1</sup> PCIA is the international trade association representing both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private System Users Alliance, and the Mobile Wireless Communications Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

<sup>2</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, MD Docket No. 98-36, FCC 98-40, *Notice of Proposed Rulemaking* (Mar. 25, 1998). The *NPRM* was published in the Federal Register on April 2, 1998, 63 Fed. Reg. 16,188 (Apr. 2, 1998). Comments are due April 22, 1998, and reply comments are due on May 4, 1998. *Id.*

## **I. THE *NPRM* FAILS TO JUSTIFY THE FEE INCREASES PROPOSED FOR CMRS MOBILE SERVICES AND CMRS MESSAGING SERVICES**

The *NPRM* states that the Commission is required to recover for FY 1998, nearly 7% more in regulatory fees than Congress designated for recovery in FY 1997.<sup>3</sup> The *NPRM* proposes to increase the regulatory fee for CMRS Mobile Services from \$0.24 to \$0.29, a 21% increase over FY 1997, and the regulatory fee for CMRS Messaging Services from \$0.03 to \$0.04, a 33% increase over FY 1997.<sup>4</sup> Based on the proposed fee increases, the *NPRM* calculates expected revenue for FY 1998, at \$16,191,466 for CMRS Mobile Services and \$1,442,773 for CMRS Messaging Services,<sup>5</sup> increases of 43% and 14%, respectively, over expected revenue for FY 1997.<sup>6</sup> The *NPRM* provides other information, including, in relevant part, an adjusted number of payment units: 55,554,000 units for CMRS Mobile Services and 39,592,000 units for CMRS Messaging Services,<sup>7</sup> an increase of 18% and a decrease of 3%, respectively, over FY 1997 estimates;<sup>8</sup> pro-rated revenue requirements: \$12,953,173 for CMRS Mobile Services and

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<sup>3</sup> *Id.* at 3, ¶ 2. Congress increased the appropriation amount by \$10,000,000 from FY 1997. *Id.*

<sup>4</sup> *Id.* at 43c, Att. E; 44, Att. F; and 47, Att. G.

<sup>5</sup> *Id.* at 43c, Att. E.

<sup>6</sup> In its Report and Order for Fiscal Year 1997, the Commission calculated expected revenue for CMRS Mobile Services providers at \$11,316,000, and for CMRS Messaging Services providers at \$1,261,500. *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, MD Docket No. 96-186, FCC 97-215, *Report and Order*, 12 FCC Rcd 17161, at ¶ 62 (June 26, 1997) (“*FY 1997 Report and Order*”). Because the Commission has declined to provide actual fee collection data, *id.* at ¶ 28, the percentages in this paragraph are based on comparisons between “estimates” provided in the Commission’s *FY 1997 Report and Order* and the *NPRM*.

<sup>7</sup> *NPRM* at 43a, Att. C.

<sup>8</sup> In its *FY 1997 Report and Order*, the Commission estimated units for CMRS Mobile Services at 47,150,000, and for CMRS Messaging Services at 41,000,000. *FY 1997*

\$1,154,218 for CMRS Messaging Services,<sup>9</sup> increases, respectively, of 46% and 27% over FY 1997 pro-rated revenue requirements;<sup>10</sup> and a calculation of adjusted regulatory costs, which includes direct costs, as well as a pro-rata share of overhead and indirect expenses: \$12,201,768 for CMRS Mobile Services and \$6,510,866 for CMRS Messaging Services,<sup>11</sup> a decrease of 3 % and an increase of 579%, respectively, over FY 1997 adjusted regulatory costs.<sup>12</sup>

While the *NPRM* provides these final figures as the figures the Commission plugs into its equation for calculating FY 1998 regulatory fees pursuant to Section 9 of the Communications Act, as amended,<sup>13</sup> the Commission continues to deny fee payers the data upon which the figures are determined. Because regulatory fees affect consumer costs, the Commission's duty to protect the public interest demands an explanation of how these final figures are determined, particularly where the collection process is a collaborative effort between Congress and the Commission and

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*Report and Order* at ¶ 62.

<sup>9</sup> *NPRM* at 43a, Att. C.

<sup>10</sup> In its *FY 1997 Report and Order*, the Commission calculated pro-rated revenue requirements for CMRS Mobile Services at \$12,953,173, and for CMRS Messaging Services at approximately \$1,154,218. *FY 1997 Report and Order* at Att. C.

<sup>11</sup> *NPRM* at 43b, Att. D.

<sup>12</sup> In its *FY 1997 Report and Order*, the Commission calculated adjusted regulatory costs for CMRS Mobile Services at \$12,559,141, and for CMRS Messaging Services at \$959,039. *FY 1997 Report and Order* at Att. E. While the Commission re-adjusted the FY 1997 figures for "estimated payment units" and "expected revenue" for these fee categories in its *FY 1997 Report and Order* to reflect establishment of the new CMRS Messaging Services category, *id.* at ¶ 62, it did not similarly provide re-adjusted figures for regulatory costs. The re-adjusted figures, however, did not change the proposed fees for FY 1997. *Id.* As a result, the percentage difference between FY 1997 and FY 1998 figures for adjusted regulatory costs is a reasonably accurate approximation.

<sup>13</sup> 47 U.S.C. § 159.



fee payers are afforded no judicial review of those determinations.<sup>14</sup> As a result, PCIA, once again, urges the Commission to provide information that is essential for verifying the proposals for increasing regulatory fees to be collected from regulatees, in general, and from CMRS Mobile Services and CMRS Messaging Services providers, in particular.

First, PCIA requests clarification on how full-time equivalent (“FTE”) employees are used in calculating regulatory fees under the Commission’s cost accounting system. Section 1.1163 of the Commission’s rules requires fee assessment based on the FTE number of employees within the “Wireless Telecommunications Bureau, Mass Media Bureau, Common Carrier Bureau, Cable Services Bureau, International Bureau and other offices of the Commission.”<sup>15</sup> The Commission has previously defined the term “FTE employment” as “the total number of regular straight-time hours (i.e., not including overtime or holiday hours) worked or to be worked by current and future employees divided by the number of compensable hours applicable to each fiscal year.”<sup>16</sup> The Commission has also described its reliance on FTE

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<sup>14</sup> Section 9(b) of the Act expressly prohibits parties from seeking judicial review of any Commission action on mandatory adjustments or permitted amendments. *Id.* §§ 159(b)(2) & (3). Similarly, the requirements that the Commission notify Congress of any mandatory adjustments immediately upon adoption of the adjustment, and of any permitted amendments not later than 90 days before the effective date of the amendment, *id.* § 159(b)(4)(A) & (B), effectively preclude any practical opportunity to challenge or obtain relief from Commission decisions under Section 9. This lack of remedy demands disclosure of supporting information relevant to the Commission’s determinations on regulatory fees.

<sup>15</sup> 47 C.F.R. § 1.1163 (1997).

<sup>16</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, MD Docket No. 96-84, FCC 96-295, *Report and Order*, 11 FCC Rcd 18774, at n.14 (July 5, 1996) (“FY 1996 Report and Order”); and *Assessment and Collection of Regulatory Fees for Fiscal Year 1995 and Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Act*, MD Docket No. 95-3, FCC 95-227, *Report and Order*, 10 FCC Rcd 13512, at n.4 (June 19, 1995) (“FY 1995 Report and Order”).

employment numbers prior to implementation of its cost accounting system.<sup>17</sup> The Commission has not, however, explained how FTE employees are relevant to its methodology that relies on its cost accounting system.

PCIA is aware that the Commission employs “permanent” employees, “term” employees, and “contract” personnel. While these “groupings” in no way reflect the ability of any person to perform a job, it is PCIA’s understanding that the groupings do reflect the extent of compensation afforded each person. Specifically, the Commission does not provide contract personnel certain costly benefits. While term employees are considered Commission employees, are hired for a term not to exceed four years, and receive full benefits, including annual and sick leave, holidays, overtime pay, compensatory time, as well as health and retirement benefits,<sup>18</sup> PCIA understands that contract personnel are not Commission employees and, while they receive annual and sick leave, holidays, overtime, and compensatory time, the Commission does not provide health or retirement benefits.<sup>19</sup> It is also PCIA’s understanding that the Commission had authority to hire term employees immediately after passage of the 1996 Act, but the majority of people hired over the past fiscal year who work on regulatory and licensing issues have been

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<sup>17</sup> See *FY 1995 Report and Order* at ¶¶ 11-12 (explaining the method for allocating the total appropriations requirements among the fee categories, Private Radio, Mass Media, Common Carrier, and Cable Services, based on FTEs).

<sup>18</sup> The initial group of “term” employees hired to implement provisions of the Telecommunications Act of 1996 (“1996 Act”) were hired for a term “not to exceed four years,” without restriction. Subsequently, the Commission hired term employees for a thirteen-month period, and if approved, the thirteen-month term could be extended for a period not to exceed four years from the initial date of the thirteen-month period. Thus, Bureaus or Divisions must provide a basis for extending the thirteen-month period to a term not to exceed four years for some term employees. All term employees, however, receive full benefits.

<sup>19</sup> “Contract” personnel are initially hired for a twelve-month period, which can be renewed for one additional twelve-month period.

contract personnel.

PCIA submits that with the turnover at the Commission and corresponding influx of contract personnel, who do not receive expensive health and retirement benefits, regulatory costs should logically decrease rather than increase and should certainly not create an increase of 579% in any one fee service category. PCIA seeks clarification on how the Commission factors contract personnel compensation in calculating the number of FTE employees as well as the number of compensable hours applicable to a fiscal year. PCIA further seeks clarification on how the number of FTE employees are used in the Commission's methodology under its new cost accounting system.

PCIA further submits that the large influx of new personnel working for the Commission over the past fiscal year is also relevant to whether the information gathered in its cost accounting system is accurate. In its *FY 1997 Report and Order*, the Commission described its cost accounting system in an effort to reassure payers about the "integrity of the system and its unbiased distribution of costs."<sup>20</sup> In relevant part, the order described cost codes, which consist of two-digit "Activity Codes," such as "Authorization of Service,"<sup>21</sup> "Policy and Rulemaking," "Enforcement," and "Public Information," together with three-digit program codes designating the service category.<sup>22</sup> Moreover, the Commission described the cost accounting system as containing built-in safeguards designed to ensure data integrity, including the requirements that

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<sup>20</sup> *FY 1997 Report and Order* at ¶¶ 15-20.

<sup>21</sup> The Commission defines "Authorization of Service" as "[t]he authorization or licensing of radio stations, telecommunications equipment, and radio operators, as well as authorization of common carrier and other services and facilities. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with authorization activities." *NPRM* at 63, Att. I.

<sup>22</sup> *FY 1997 Report and Order* at ¶ 18.

employees certify the accuracy of “service category codes” and supervisors review and attest by their signature that the coding “appears to be appropriate.”<sup>23</sup> The Commission explained that extensive training was provided to timekeepers and each Commission employee was provided with detailed instructions pertaining to use of the cost accounting system.<sup>24</sup> Finally, the Commission assured fee payers that agency employees are “generally well acquainted” with the distinction between feeable and non-feeable categories.<sup>25</sup>

The *FY 1997 Report and Order* assertions that employees are “generally well acquainted” with the distinction between feeable and non-feeable categories, that employees must certify the accuracy of “service category codes,” but apparently not activity codes, and that supervisors review and attest to whether the coding “appears to be appropriate,” in combination with an influx of new personnel, who often have little or no telecommunications background, suggests an environment full of potential for error on the part of cost coding time and attendance sheets. Based on the types of documents issued from the Wireless Telecommunications Bureau over FY 1997, PCIA asserts below that there is, in fact, evidence of substantial error in the time and attendance cost coding.

Initially, however, PCIA urges the Commission to ensure that the Bureaus include in the detailed instructions provided to employees a description of which Activity Codes are feeable and which are not, as well as the importance of the distinction. For example, the detailed instructions could include the following paragraph:

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<sup>23</sup> *Id.* at ¶ 16.

<sup>24</sup> *Id.* at ¶ 18.

<sup>25</sup> *Id.*

To ensure the accuracy of the information collected from time and attendance sheets, all FCC employees must understand the distinction between Activity Codes that are feeable and non-feeable under Section 9 of the Act, which authorizes the Commission to collect regulatory fees. The feeable Activity Codes under Section 9 are: "Policy and Rulemaking," "Enforcement," and "Public Information." Hours worked on issues related to "Authorization of Service" are non-feeable under Section 9, but pertain to application fees collected pursuant to Section 8 of the Act. Improperly charging hours worked on authorizations or licensing activities to feeable categories will skew actual cost allocations in calculating Section 9 regulatory fees and result in improper charges to industry.

In addition, the Commission should include a set of codes that describe the types of issues that pertain to each activity code. For example, codes numbered 1-9 could be assigned to "Authorization of Service:" 1-Permitting; 2-Licensing and so on. Codes numbered 10-19 could be assigned to "Enforcement:" 10-Complaints, 11-Notices of Apparent Liability and so on. Similarly, codes numbered 20-29 could be assigned to "Policy and Rulemaking" issues and codes numbered 30-39 could be assigned to "Public Information" issues. These issue codes would provide an easy method for employees, managers, and timekeepers to verify the accuracy of cost coding on time and attendance sheets.<sup>26</sup> Assuring managers and employees understand the importance of accurate cost coding and providing additional methods to ensure that accuracy will help ensure the integrity of the cost accounting system. Integrity in cost accounting data will assist the Commission in reaching its goal of actual cost-based regulatory fees.

The issue of the integrity of the cost accounting system is particularly relevant to the FY 1998 adjusted regulatory costs calculation for CMRS Messaging Services and CMRS Mobile Services. The lack of information in the *NPRM* effectively precludes PCIA from determining what type of costs are included or excluded from the regulatory cost amounts presented. As a

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<sup>26</sup> While the Commission should upgrade its system software to accept these issue codes, employees, managers, and timekeepers can use the codes on time and attendance sheets to double check the accuracy of the coding even before the software upgrade is completed.

result, PCIA must infer from Bureau and Commission actions over FY 1997, the reasons for cost calculations in the *NPRM*. Based on what the Wireless Telecommunications Bureau has issued with respect to services included in the CMRS Messaging Services and CMRS Mobile Services categories, it appears likely that substantial resources have been used for non-feeable categories. For example, over FY 1997, orders and public notices were issued resolving petitions relevant to numerous commercial paging applications.<sup>27</sup> Moreover, it is generally well known that the Bureau committed considerable resources to resolving the petitions to deny the PCS C-block

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<sup>27</sup> See, e.g., *In re CommNet Paging, Inc. Petition for Reconsideration of Applications to Establish Various New Base Stations*, DA 97-965, Order, 12 FCC Rcd 6036 (May 9, 1997) (resolving seven petitions); *Applications of American Paging, Inc. (Of Florida) et al.*, DA 97-1107, Order, 12 FCC Rcd 6768 (May 27, 1997) (resolving seven petitions); *Innovative Communications, Inc. For Authority for Station KAA280*, DA 97-171, Order, 12 FCC Rcd 8192 (June 17, 1997); *Applications of TSR Paging, Inc. and Applications of John L. Crump D/B/A Ace Communications for New Base Station Facilities*, DA 97-1221, Order, 12 FCC Rcd 8196 (June 18, 1997) (resolving two petitions); *Application of Zhen Fang Fu for New Facilities in the Paging and Radiotelephone Service*, DA 97-1594, Order, 12 FCC Rcd 10565 (July 25, 1997); *Application of Mountaineer Paging for Permit and License*, DA 97-1592, Order, 12 FCC Rcd 10563 (July 25, 1997); *Application of Communitronics, Inc. for Expanded Service Area*, DA 97-1593, Order, 12 FCC Rcd 10564 (July 25, 1997); *Authorizations of Arch Connecticut Valley, Inc. et al.*, DA 97-1615, Order, 12 FCC Rcd 11469 (July 30, 1997) (resolving nineteen petitions); *In re United Paging Group, Inc. for Facilities in the Public Land Mobile Service*, DA 97-1717, Order, 13 FCC Rcd 1935 (Aug. 14, 1997); *In re Susan Shyne for Facilities in the Public Land Mobile Service*, DA 97-1718, Order, 13 FCC Rcd 1940 (Aug. 14, 1997); *Application of Network Services, LLC for Authority to Establish Public Mobile Service Facilities*, DA 97-1978, Order, 12 FCC Rcd 13906 (Sept. 12, 1997); *Wireless Telecommunications Bureau Commercial Wireless Division Approves Withdrawals of Petitions to Deny*, DA 97-1136, Public Notice, 12 FCC Rcd 6860 (May 30, 1997) (resolving forty one petitions); *Commercial Wireless Division Approves Motions to Dismiss Petitions for Reconsideration and Petitions to Deny*, DA 97-1186, Public Notice, 12 FCC Rcd 7691 (June 4, 1997) (resolving thirteen petitions); *Wireless Telecommunications Bureau Commercial Wireless Division Approves Withdrawals of Petitions to Deny*, DA 97-1311, Public Notice, 12 FCC Rcd 8325 (June 23, 1997) (resolving twenty seven petitions); *Wireless Telecommunications Bureau Commercial Wireless Division Approves Withdrawals of Petitions for Reconsideration*, DA 97-1318, Public Notice, 12 FCC Rcd 8333 (June 25, 1997) (resolving six petitions); and *Wireless Telecommunications Bureau Commercial Wireless Division Approves Withdrawals of Petitions for Reconsideration, Petitions to Deny, Petitions to Revoke Licenses, and Petition for Declaratory Ruling*, DA 97-1639, Public Notice, 12 FCC Rcd 11588 (July 31, 1997) (resolving eleven petitions).

licenses of NextWave Personal Communications, Inc. and GWI PCS, Inc.<sup>28</sup> The direct, indirect, and overhead costs for resolving petitions related to permit and licensing applications, however, fall within the category of "Authorization of Service," which the Commission has expressly stated is not one of the feeable activities under Section 9(a)(1) of the Act.<sup>29</sup> PCIA is also aware that the Bureau is drafting an order to address issues raised in petitions for reconsideration of the Second Report and Order and comments made on the Further Notice of Proposed Rulemaking<sup>30</sup> pertaining to the commercial paging auction rules. FTE employees drafting this document may fall within a feeable category, but certainly should not create regulatory costs approaching \$6.5 million. This evidence raises enough questions about the accuracy of time and attendance cost coding to warrant recalculation of the regulatory costs for CMRS Messaging and CMRS Mobile Services.

PCIA next submits that the phenomenal increase in CMRS Messaging Services regulatory costs is an added reason for both providing an explanation for the increase and for recalculating those costs. As already noted, the calculated amount for CMRS Messaging Services increased 579% from FY 1997 -- from \$959,039 to \$6,510,866. This is a stunning increase in regulatory costs and yet the *NPRM* provides absolutely no reason for the increase.

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<sup>28</sup> *Applications for NextWave Personal Communications, Inc. for Various C-Block Broadband PCS Licenses*, File Nos. 00341CWL96 *et seq.*, DA 97-328, *Order*, 12 FCC Rcd 2030 (Feb. 14, 1997); and *Applications for GWI PCS, Inc. for Authority to Construct and Operate Broadband PCS Systems Operating on Frequency C*, File Nos. 00200CWL96 *et seq.*, DA 97-674, *Order*, 12 FCC Rcd 6441 (Apr. 4, 1997).

<sup>29</sup> *NPRM* at 63, Att. I, n.122; and *FY 1997 Report and Order* at n.5.

<sup>30</sup> *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems and Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, WT Docket No. 96-18 and PP Docket No. 93-253, FCC 97-59 *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732 (Feb. 24, 1997).

This lack of information is particularly troubling where the Commission's calculations reflect phenomenal increases in regulatory costs and where regulatory fees increase solely because of the Commission's subsidization methodology. A 579% increase in adjusted regulatory costs for CMRS Messaging Services demands an explanation for at least two reasons: (1) it is in the public interest for the Messaging industry and the consumers of that industry to know why regulatory costs increased so dramatically and so disproportionately to other fee categories; and (2) phenomenal increases, under the Commission's existing methodology, result in further subsidization from other fee categories that may already be subsidizing exempt regulatees or regulatees that have obtained waiver or a reduction in fee payments.<sup>31</sup>

PCIA submits that a 579% increase for a service that has been substantially deregulated for many years is, alone, evidence that regulatory costs have been miscalculated. As a result, the Commission must reassess the accuracy of its cost accounting information and recalculate the adjusted regulatory costs for CMRS Messaging Services. Accurate adjusted cost calculations will result in service providers paying a higher percentage of their adjusted costs and other fee payers paying a lower percentage in subsidies relative to their adjusted regulatory costs.

PCIA is further aware that the Commercial Wireless Division moved from 2025 M Street to 2100 M Street during FY 1997. The Commission has never stated whether moving expenses are allocated in Section 9 regulatory fee calculations, but has stated that "contractual costs attributable to regulatory oversight" as a component of "support costs" are included in Section 9

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<sup>31</sup> See *FY 1997 Report and Order* at ¶ 22 (explaining that fees recover costs attributable to regulatees that are exempt under Section 9(h) of the Act and regulatees that obtain a waiver or reduction in fee payment under Section 9(d) of the Act).



regulatory fee calculations.<sup>32</sup> In its *FY 1997 Report and Order*, the Commission stated that support “[c]osts for office space rental and telecommunications . . . are allocated to each fee category -- FCC wide -- that incurred direct costs during the month.”<sup>33</sup> PCIA submits that (1) moving expenses should not be included in Section 9 calculations; and (2) to the extent moving expenses are included, those costs should not be allocated as support costs.

Section 9(b)(3) of the Act allows the Commission to determine whether to make any adjustments in addition to the mandatory adjustments made under Section 9(b)(2), taking into account factors that are reasonably related to the benefits provided to the fee payor and other factors that are necessary to protect the public interest.<sup>34</sup> The Commission has apparently internally determined that office space rental and telecommunications are reasonably related to the benefits fee payers receive for the Commission performing duties related to Section 9 regulatory fee categories. Office moves, however, are not. Office location decisions are internal Commission decisions, as in the case of Division moves, or decisions made by the Government Service Administration or Congress, as in the case of the impending move to the Portals. Any benefit is related to Commission perceived internal organizational needs or to a reduction in Federal government expenses, which creates a benefit to the general public through lower taxes.

If the Commission includes moving expenses in calculating Section 9 regulatory fees, PCIA submits that those expenses should not be allocated as support costs. While office space and telecommunications are daily needs of Commission staff in performing their duties, office

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<sup>32</sup> 47 U.S.C. § 159(b)(2) & (3). The Commission has described “support costs” as including “rent, utilities, equipment and contractual costs attributable to regulatory oversight.” *FY 1997 Report and Order* at ¶21.

<sup>33</sup> *FY 1997 Report and Order* at ¶ 20.

<sup>34</sup> 47 U.S.C. § 159(b)(3).

moves are usually one-time costs that occur over a day or two. As support costs, moving expenses would be applied to an unlucky service fee category simply because the Division's direct costs fall within that category during those few days. Moreover, if hours have been improperly charged to feeable Section 9 categories, the misallocation of costs is compounded. For example, if the Commercial Wireless Division happened to be working on commercial paging orders related to licensing during the month when the Division moved and those hours were charged to a feeable category, moving expenses would be mischarged and misallocated to CMRS Messaging Services.<sup>35</sup> To the extent the industry and, therefore consumers, must pay the bill for Commission moving expenses, PCIA submits that those expenses be allocated across all feeable service categories regardless of whether the category incurs direct costs at the time of the move. This is a particularly important issue considering the Commission's impending move to the Portals during FY 1998 and the controversy over funding that move.

Because of the effects of the lack of information in the *NPRM*, PCIA submits that the Commission must set a benchmark, *i.e.*, 10% increase in costs, at which a substantial and detailed explanation of the increase must be included in future regulatory fee rulemakings. Based on information from its cost accounting records alone, the Commission could provide a list of services that produce the increase, including the direct, indirect and overhead costs applicable to those service categories. Likewise, when costs dramatically increase, the Commission should seek more specific information about the reasons for the increase from Commission staff, who already propose adjustments to the Fee Schedule as part of the

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<sup>35</sup> See *supra* note 28 (listing orders and public notices relevant to commercial paging authorizations issued during FY 1997).

Commission's collection procedures.<sup>36</sup> Using these methods would not increase demand on Commission resources and would provide both fee payers and consumers with the ability to verify the accuracy of the increased costs and, therefore, assist the Commission in its monitoring of the integrity of its cost accounting system.

Finally, PCIA urges the Commission once again to provide actual fee collection data, including the number of actual payment units and the actual amount of fees collected in fee categories for the previous fiscal year. The Commission provides service-by-service information on the basis for its FY 1998 payment units in Attachment B of the *NPRM*,<sup>37</sup> but that information is merely a summary listing of sources for its estimation of payment units, not an explanation of how the Commission arrived at the final estimated number of payment units. The Commission stated in its *FY 1997 Report and Order* that "actual historical payment units and collection amount for the various categories of services have been routinely available for inspection to interested persons upon request."<sup>38</sup> If the information is routinely available, the Commission should include prior fiscal year actual payment unit data in Attachment C (or its equivalent in the future) to allow parties to compare prior fiscal year payment unit data with the proposed estimates. Likewise, the Commission should include prior fiscal year actual fees collected in Attachment E (or its equivalent in the future) to allow parties to compare prior fiscal year collections with expected current fiscal year revenue. The Commission is fond of vaunting the improved accuracy of its calculations based on actual payment units and fee collections, but,

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<sup>36</sup> See *NPRM* at 5, ¶ 11 (describing the process by which staff proposals are evaluated for purposes of the Commission's collection procedures).

<sup>37</sup> *Id.* at 43, Att. B.

<sup>38</sup> *FY 1997 Report and Order* at ¶ 28.

mysteriously declines to make the information easily available.<sup>39</sup> Requiring service providers as well as other members of the public to go through the process of requesting routinely available information that the Commission could simply provide in its regulatory fee rulemakings effectively creates an unnecessary impediment to important information and results in higher costs to consumers who ultimately pay for these regulatory hurdles.

## **II. INCREASED REGULATORY FEES INHIBIT MARKET GROWTH AND CREATE BARRIERS TO COMPETITION**

The proposed increases in regulatory fees for CMRS Mobile Services and CMRS Messaging Services must be considered in two ways. As already noted, the *NPRM* proposes a 21% increase for CMRS Mobile Services and a 33% increase for CMRS Messaging Services in regulatory fees from FY 1997 levels. Over the past three fiscal years, however, regulatory fees for CMRS Mobile Services, based on the *NPRM* proposal, will have increased 93%.<sup>40</sup> Likewise, over the past two fiscal years, CMRS Messaging Services fees have increased 100%.<sup>41</sup> On the other hand, based on the *NPRM* proposed fees, Interstate Telephone Service Provider fees will

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<sup>39</sup> *Id.* (stating that “[w]e believe that this reliance upon actual ‘historical’ or retrospective FY 1996 data provides us a much greater confidence level than would an estimate of payment units made prospectively,” but then declining to provide the actual data).

<sup>40</sup> The regulatory fee imposed on the Public Mobile/Cellular fee category in FY 1995 was \$0.15, *FY 1995 Report and Order* at App. G, while the FY 1998 proposed fee for CMRS Mobile Services is \$0.29, *NPRM* at 44, Att. F.

<sup>41</sup> The regulatory fee imposed on the CMRS One-Way Paging fee category in FY 1996 was \$0.02, *FY 1996 Report and Order* at App. D, while the FY 1998 proposed fee is \$0.04, *NPRM* at 44, Att. F. The Commission added other narrowband services to the CMRS One-Way Paging category in its *FY 1997 Report and Order* and renamed the category CMRS Messaging Services. *FY 1997 Report and Order* at ¶ 62. The adjustment increased CMRS Messaging Services by 150,000 units and decreased CMRS Mobile Services by that same number, but the adjustment had no effect on the actual fee amounts to be paid for FY 1997. *Id.* Thus, the percentages are valid regardless of the adjustments made in FY 1997.

decrease by 5% from FY 1997 fees and have increased overall only 25% since FY 1995.<sup>42</sup> The category "Interstate Service Providers" includes Inter-Exchange Carriers ("IXCs"), Local Exchange Carriers ("LECs"), Competitive Access Providers, and other switched service providers.<sup>43</sup>

These figures create an inference that regulatory obligations, outside licensing functions, for the CMRS Mobile and CMRS Messaging Services are far out pacing regulatory obligations for the wireline industry. This defies common sense. Commercial wireless services are highly deregulated. For example, the Commission does not regulate rates for commercial wireless carriers and commercial wireless service providers are not required to file or amend Federal tariffs. On the other hand, the Commission does regulate IXC rates and IXCs must file tariffs and continually seek authority to revise those tariffs.<sup>44</sup> Similarly, the Commission must process any tariffs that LECs file pursuant to Section 204(a)(3) of the Communications Act, as amended.<sup>45</sup> Commercial wireless service providers, however, must obtain permits and licenses for construction and operation of their facilities,<sup>46</sup> while no such similar requirement is imposed on domestic IXC construction and operation.

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<sup>42</sup> The regulatory fee for this category in FY 1997 was \$0.00116 per revenue dollar, *FY 1997 Report and Order* at Att. F, while the FY 1998 proposed fee is \$0.00110 per revenue dollar, *NPRM* at 46, Att. F. The regulatory fee for this category in FY 1995 was \$0.00088 per revenue dollar. *FY 1995 Report and Order* at App. G.

<sup>43</sup> *NPRM* at 58, ¶ 33.

<sup>44</sup> 47 C.F.R. § 61.1 *et seq.*

<sup>45</sup> 47 U.S.C. § 204(a)(3); and 47 C.F.R. § 61.51.

<sup>46</sup> *See, e.g.*, 47 C.F.R. Part 22 (establishing requirements under which domestic common carrier radio stations, including commercial paging, may be licensed and used in the Public Mobile Services); and 47 C.F.R. Part 24 (establishing requirements for licensing personal communications services).

While the Commission has so far pointed the finger at Congress and its appropriations requirements to deflect the argument that regulatory fees should decrease for the deregulated wireless industry,<sup>47</sup> the disparity in increases between wireless and wireline categories provides yet another reason for the Commission to re-examine its calculations for CMRS Mobile and CMRS Messaging Services. The Commission effectively has no domestic authorization or licensing obligations for wireline carriers, while a substantial portion of Commission resources are needed for the permitting and licensing of wireless carriers. This difference in regulatory requirements eliminates the problem of distinguishing between feeable and non-feeable categories under Section 9 of the Act for wireline carriers. PCIA again urges the Commission to reassess its cost accounting data collected for CMRS Mobile and CMRS Messaging Services prior to issuing final regulatory fee amounts for FY 1998.

Finally, the Commission must recognize the significant affect its regulatory fee determinations have on competition between the commercial wireless and wireline industries. The Commission has recognized repeatedly that the primary barrier to competition between the two types of services is consumer pricing.<sup>48</sup> Continuing to drive up regulatory costs for CMRS Mobile and CMRS Messaging Services only inhibits the opportunity for competition between

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<sup>47</sup> See *FY 1997 Report and Order* at ¶ 23 (stating that “our fees are designed to recover the amount that Congress has required us to collect and, although based upon the cost of service of each category of regulatee, include costs that are not directly related to those entities subject to a fee. Therefore, a particular fee and resulting revenue collection will invariably exceed the service’s direct regulatory costs . . . notwithstanding that actions by Congress and the Commission to deregulate would appear to warrant a lower fee”).

<sup>48</sup> See *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, FCC 97-75, Second Report, Rep. WT 97-14 at 54 (Mar. 25, 1997); and *In the Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, File No. NSD-L-96-10, FCC 97-286 at ¶¶ 89-90 (Aug. 14, 1997).

wireless and wireline services. Ultimately, the consumer is harmed in at least two ways: (1) prices cannot drop for commercial wireless services in a manner the industry would like, resulting in fewer overall consumer subscriptions; and (2) competition between commercial wireless and wireline services is chilled, limiting consumers' choices among telecommunications services contrary to the intent of the Telecommunications Act of 1996.<sup>49</sup>

### III. CONCLUSION

The process for calculating Section 9 regulatory fees is a collaborative effort between Congress and the Commission to raise revenue for Federal government expenditures. Fee payers have no recourse with respect to mandatory adjustments. Other than trying to obtain relief within the short 90-day notification period from Congress -- the very body that has similar interests in raising revenue and that granted the Commission its collection authority in the first place -- fee payers have no recourse with respect to permitted adjustments. PCIA has demonstrated that significant questions exist regarding the accuracy of the data collected under the Commission's cost accounting system for CMRS Mobile and CMRS Messaging Services. The public interest demands that the Commission re-examine its data and recalculate its adjusted regulatory costs

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<sup>49</sup> See *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, FCC 97-298, *Memorandum Opinion and Order*, at ¶ 10 (Aug. 19, 1997) (stating that "[t]he 1996 Act's overriding goal is to open all telecommunications markets to competition and, ultimately, to deregulate these markets").

before issuing final regulatory fee amounts for FY 1998. Accurate regulatory costs will establish integrity for this cumbersome process.

Respectfully submitted,

**PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

A handwritten signature in black ink, appearing to read 'Mark J. Golden', is written over a horizontal line.

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April 22, 1998